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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 DESHON AARON ATKINS,

12 Petitioner,

13 v.

14 W.L. MONTGOMERY,

15 Respondent.
16

Case No. 2:18-cv-06877-DOC-MAA

**ORDER ACCEPTING REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other
18 records on file herein, and the Report and Recommendation of the United States
19 Magistrate Judge.

20 The Court also has reviewed Petitioner's objections to the Report and
21 Recommendation, which the Court received and filed on June 29, 2020
22 ("Objections"). (Objs., ECF No. 26.) As required by Federal Rule of Civil
23 Procedure 72(b)(3), the Court has engaged in de novo review of the portions of the
24 Report and Recommendation to which Petitioner specifically has objected.

25 First, Petitioner argues that the Magistrate Judge overlooked his challenge to
26 the state court's factual summary of the conviction. (Objs., at 2.) The Court of
27 Appeal's factual summary, which was adopted by the Magistrate Judge,
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1 summarized the evidence presented at trial. (*See* Report and Recommendation,
2 ECF No. 25, at 4–5 (quoting Lodgment (“LD”) 4, ECF No. 10-4, at 3–5).)
3 Although Petitioner argues that Beasley was not present at the scene of the crime
4 and that he presented this argument to the state courts, Petitioner has not challenged
5 any specific portion of the Court of Appeal’s factual summary. (*See* Objs., at 2; *see*
6 *also* Petition, ECF No. 1.) Thus, he has not shown by clear and convincing
7 evidence that any of the information contained in the Court of Appeal’s factual
8 summary is incorrect. *See* 28 U.S.C. § 2254(e)(1); *Hedlund v. Ryan*, 854 F.3d 557,
9 563 (9th Cir. 2017).

10 Second, Petitioner argues that his insufficient evidence claim has merit
11 because attempted murder requires the specific intent to kill, “[i]t’s impossible to
12 have intentions to kill someone who is not present at the scene of the crime,” and
13 the evidence presented at trial did not prove that Beasley was present at the scene of
14 the shooting. (Objs., at 3.) This argument lacks merit for the reasons stated in the
15 Report and Recommendation. (Report and Recommendation, at 20–22.)

16 Third, Petitioner argues that the Court of Appeal and Magistrate Judge
17 improperly assumed that any inconsistencies in the trial court’s evidentiary rulings
18 were harmless, and that an evidentiary hearing is warranted on this issue. (Objs., at
19 3–5.) This argument also fails for the reasons discussed in the Report and
20 Recommendation. (Report and Recommendation, at 20–21.)

21 Fourth, Petitioner asserts that the prosecutor “presented unsubstantiated
22 evidence of Beasley to the jury as facts, causing confusion and persuading the jury
23 to a finding of guilt.” (Objs., at 5.) Petitioner refers to the following statement: “I
24 have an officer that will testify he went to the hospital, saw the injury to Mark
25 Beasley on the same date and time.” (*Id.* (quoting 6 RT 1825)). However, the
26 prosecutor made this statement outside of the jury’s presence, during a sidebar
27 discussion between the trial court judge, the prosecutor, and defense counsel. (*See*
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1 6 RT 1824 (noting that the proceedings occurred in the hallway outside the
2 presence of the jury)). Thus, Petitioner's argument that this statement caused the
3 jury confusion and led to the guilty verdict lacks merit.

4 In sum, the Court finds no defect of law, fact, or logic in the Report and
5 Recommendation. The Court concurs with and accepts the findings, conclusions,
6 and recommendations of the United States Magistrate Judge, and overrules the
7 Objections.

8 IT THEREFORE IS ORDERED that (1) the Report and Recommendation of
9 the Magistrate Judge is accepted; and (2) Judgment shall be entered denying the
10 Petition and dismissing this action with prejudice.

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12 DATED: August 26, 2020

David O. Carter

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14 DAVID O. CARTER
15 UNITED STATES DISTRICT JUDGE
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